

RECEIVED

SEP 19 2013

JULIE A. RICHARDS, CLERK  
US DISTRICT COURT, EDNC

FORM TO BE USED BY A FEDERAL PRISONER IN FILING A PETITION FOR WRIT  
OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION 2241

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:13-HC-2204  
(leave this space blank)

JIMMY JAMES WITHERSPOON

(enter full name of petitioner)

v.

Inmate Number 22882-057

ANGELA DUNBAR

(enter full name of respondent)

\*\*\*\*\*  
1. Place of detention F.C.I BUTNER II

2. Name and location of court which imposed sentence UNITED STATES DISTRICT  
COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3. List the indictment number(s) (if known) upon which sentence was imposed and the  
offense(s) for which sentence was imposed. INDICTMENT NUMBER NOT KNOW. HOWEVER,  
WAS SENTENCED FOR POSSESSION OF A FIREARM BY A CONVICTED FELON.

4. Give the date upon which sentence was imposed and the terms of the sentence   
SENTENCED WAS IMPOSED ON JUNE, 26, 2013. 240 MONTH SENTENCE IMPOSED.

5. Check whether a finding of guilty was made

☐ After a plea of guilty

☒ After a plea of not guilty

☐ After a plea of nolo contendere

6. If you were found guilty after a plea of not guilty, check whether that finding was made by ☒ a jury

☐ a judge without a jury

7. Did you appeal from the judgment of conviction or the imposition of the sentence?

☒ yes

☐ no

8. If you answered "yes" to #7, list

(a) the name of each court to which you appealed:

(1) UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(b) the result in each court to which you appealed, and the date of each such result:

(1) CONVICTION AFFIRMED ON DECEMBER 16, 2009.

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(c) if known, the citations of any written opinion(s) or order(s) entered pursuant to such results:

(1) 210 Fed. Appx 256 (4th Cir. 2009)

(2) \_\_\_\_\_

(3) \_\_\_\_\_

9. State concisely the *grounds* on which you base your allegations that you are being held in custody unlawfully. IN LIGHT OF THE SUPREME COURT'S DECISION OF DESCAMPS v. UNITED STATES, 133 S.CT 2276 (2013), THE FOURTH CIRCUIT DECISION OF THOMPSON V. UNITED STATES, 421 F.3d 278 (4th Cir. 2005) WHICH ALLOWS A SENTENCING COURT TO FIND THAT THE PRIOR WAS COMMITTED

ON OCCASIONS SEPARATE FROM ONE ANOTHER, HAD BEEN ERODED BY DESCAMPS.

(2) ALSO BASED ON THE RECENT FOURTH CIRCUIT DECISION OF UNITED STATES V. DAVIS, PETITIONER'S ENHANCEMENT UNDER § 924(e) IS INVALID AS HE NO LONGER HAVE THREE VIOLENT FELONY CONVICTIONS.

10. State concisely and in the same order the *facts* which support each of the grounds set out in #9. SEE ATTACHED MEMORANDUM OF LAW

11. Have you previously filed petitions for habeas corpus, motions under 28 U.S.C. § 2255, or any other applications, petitions or motions with respect to this conviction?

☐ yes

☒ no

12. If you answered "yes" to #11, list each petition, motion or application.

(a) The specific nature thereof:

(1) N/A

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(b) The name and location of the Court in which each was filed:

(1) N/A

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(c) The disposition and date of each such disposition:

(1) N/A

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(d) The citations, if known, of any written opinion(s) or order(s) entered pursuant to each such disposition:

(1) N/A

(2) \_\_\_\_\_

(3) \_\_\_\_\_

13. If you did not file a motion under 28 U.S.C. § 2255, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention: THE SUPREME COURT DECISION OF DESCAMPS,  
WAS DECIDED AFTER PETITIONER'S FIRST § DIRECT APPEAL AND FIRST 2255,  
AND BECAUSE DESCAMPS WASN'T A NEW RULE OF CONSTITUTIONAL LAW,  
2255 IS INADEQUATE AND INEFFECTIVE TO TEST THE LEGALITY OF THE  
CONVICTION AND SENTENCE.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
14. Has any ground set forth in #9 been previously presented to this court or any other federal court by way of application for habeas corpus, motion under 28 U.S.C. § 2255, or any other petition, motion or application?

☐ yes

☒ no

15. If you answered "yes" to #14, identify:

(a) which grounds have been previously presented:

(1) N/A

(2) N/A

(3) N/A

(b) the proceeding in which each ground was raised:

(1) N/A

(2) N/A

(3) N/A

16. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? ☒ yes ☐ no

(b) your trial, if any? ☒ yes ☐ no

(c) your sentence? ☒ yes ☐ no

(d) your appeal, if any, from the judgment or conviction or the imposition of sentence? ☒ yes ☐ no

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? ☐ yes ☐ no

17. If you answered "yes" to one or more parts of #16, list

(a) the name and address of each attorney who represented you:

(1) WILLIAM TRIVETTE

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(b) the proceedings at which each attorney represented you:

(1) ARRAIGNMENT

(2) TRIAL

(3) APPEAL

Signed this 11 day of Sep, 2013.

3 Jay G. Wathen  
Signature of Petitioner

I declare under penalty of perjury that the foregoing is true and correct.

9-11-13

Date

3 Jay G. Wathen  
Signature of Petitioner